

1 IN THE UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF TEXAS

3 EL PASO DIVISION

4 VOLUME 20 OF 20

5  
6 UNITED STATES OF AMERICA

EP:13-CR-0370-DCG

7 v.

EL PASO, TEXAS

8 MARCO ANTONIO DELGADO

December 19, 2017

9 **RESTITUTION HEARING**

10 THE HONORABLE DAVID C. GUADERRAMA

11 UNITED STATES DISTRICT JUDGE

12  
13 APPEARANCES:

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1 (Open court.)

2 (Defendant and counsel present.)

3 THE COURTROOM DEPUTY: EP:13-CR-370, Marco Antonio  
4 Delgado.

5 MS. KANOF: Good afternoon, Your Honor. Debra Kanof,  
6 Anna Arreola and Kristy Callahan for the United States.

7 Your Honor, I'd like to introduce Kristy Callahan, if  
8 you already haven't met her. She heads our Financial  
9 Litigation Unit for the Western District of Texas, which is  
10 housed in our San Antonio division, but she assists all of us.  
11 And she very graciously agreed to take a look at the  
12 restitution issues and the law pertaining to the restitution  
13 issues in these cases in order to assist us and will be  
14 handling the primary issues in this case, although AUSA Arreola  
15 and I will assist where there are factual issues that maybe  
16 from the trial that she, of course, was not present during.

17 THE COURT: Good afternoon, Ms. Kanof, Ms. Arreola and  
18 Ms. Callahan. I've had the pleasure of meeting Ms. Callahan on  
19 three separate occasions. This will be the fourth. So I am  
20 actually familiar with her. Welcome to El Paso.

21 MR. HANSHEW: Good afternoon, Judge. It's just the  
22 two of us, Maureen Franco and Erik Hanshaw on behalf of Mr.  
23 Delgado. We are ready.

24 PROBATION OFFICER CARRILLO: Good afternoon, Your  
25 Honor. Isabel Carrillo for U.S. Probation on behalf of Sandra

1 Torres.

2 THE COURT: Okay.

3 And who's representing Mitsubishi here?

4 MR. HERRINGTON: Good afternoon, Your Honor. Matt  
5 Herrington representing Mitsubishi.

6 THE COURT: All right.

7 And C.F.E.?

8 MR. MANEY: Your Honor, Mark Maney for C.F.E.

9 THE COURT: All right.

10 Okay. So I suppose that our process will be the  
11 government has the burden of showing where the restitution is  
12 owed. And so we'll start with that.

13 I think there was a lot of confusion. The last  
14 hearing we had there was huge confusion as to who paid what and  
15 how much. I mean there was like a \$60-million discrepancy  
16 between C.F.E. and Mitsubishi. C.F.E. is saying they paid  
17 130-million. Mitsubishi is saying they only received 60. And  
18 there is some missing money. I think the parties have worked  
19 that out. From what I understand, they've agreed -- Mitsubishi  
20 has agreed to subordinate their claim to the electric company.

21 And somewhere in the paperwork I saw where the  
22 electric company signed their rights to Mitsubishi. This was  
23 at page four Mitsubishi's impact letter. So, confusion all  
24 around.

25 MS. CALLAHAN: So, Your Honor, Kristy Callahan for the

1 United States. I'm going to attempt to eliminate the confusion  
2 today.

3 I understand from the victims that C.F.E. and  
4 Mitsubishi do not agree regarding the government's brief. It  
5 appears that there is a settlement agreement from 2013 that the  
6 United States has with it, and I believe that the defense has  
7 already seen, I think it may have been dealt with a motion in  
8 limine before this Court before the trial. But nevertheless,  
9 what we have before us or really the losses attributable to the  
10 counts of conviction, there are three counts in which  
11 restitution stems from. They're Counts One, Two and Three.

12 Counts One and Two deal with a \$32-million that was  
13 wired to Delgado's Turks and Caicos accounts. So from those  
14 what we can look at is what amount did Mr. Delgado divert  
15 improperly and that's really simple. The amount is  
16 \$13,678,907.00. That amount would belong to C.F.E.

17 THE COURT: Tell me again. 13-million.

18 MS. CALLAHAN: \$13,678,907.00.

19 THE COURT: Okay.

20 MS. CALLAHAN: The issue really is Count Three and  
21 that is where there's a little bit of a gray area. And the  
22 reason for that --

23 THE COURT: Before we go there, out of the 13-million  
24 that he diverted, how much of that was paid to Mitsubishi?

25 MS. CALLAHAN: How much of that has been paid to

1 Mitsubishi? None that I'm aware of.

2 So the settlement agreement --

3 THE COURT: I understand Delgado paid \$11,321,093.00  
4 to someone and then an additional \$7-million to someone. This  
5 is at page 76 of the report. So who was that money paid to?

6 MS. CALLAHAN: The 95-million?

7 MR. HERRINGTON: That money was paid to Mitsubishi?

8 THE COURT REPORTER: Could you use the microphone,  
9 please?

10 MR. HERRINGTON: Sorry.

11 THE COURT: So Mitsubishi received \$18-million out of  
12 the 32?

13 MS. KANOF: Yes, Your Honor.

14 MR. HERRINGTON: Which was less than IT WAS supposed  
15 to get, Your Honor, so...

16 THE COURT: We're not getting there yet. We're going  
17 to go one step at a time.

18 I'm trying to get to this 13-million, because Delgado  
19 didn't keep 13-million. I think he kept 6-million 691, but  
20 I'll follow your numbers and then show you mine, and then we'll  
21 see if we can agree?

22 MS. CALLAHAN: So we get to those numbers using the  
23 table that's in the presentence report and so we look at  
24 several numbers. There's the amount that Mr. Delgado wired to  
25 Mitsubishi, which is the \$18-million number. After we are

1 finished with that, there's the amount that he wired to F.G.G.,  
2 which is about 3.4-million.

3 THE COURT: Uh-huh.

4 MS. CALLAHAN: And then whatever is left --

5 THE COURT: 2500 or 2-million-5 in Turks and Caicos  
6 account.

7 MS. CALLAHAN: Yes.

8 THE COURT: Which the government picked up.

9 MS. CALLAHAN: So then whatever is left is the amount  
10 that he diverted today his own pockets or spent.

11 THE COURT: So show me how this adds up and this comes  
12 out to 13.

13 We got 32-million.

14 MS. CALLAHAN: We have the 32-million.

15 THE COURT: We take out 18 to Mitsubishi.

16 MS. CALLAHAN: Right.

17 THE COURT: So that's 14. Now 14-million and you pay  
18 how much F.G.G.?

19 MS. CALLAHAN: So F.G.G. was the \$3,450,110.00.

20 THE COURT: Ms. Arreola is coming apart over there.  
21 Just walk over there or tell her whatever you want.

22 MS. CALLAHAN: She's breaking it up more.

23 THE COURT: 3-million-450, then we are at  
24 10-million-650.

25 MS. CALLAHAN: Right.

1 THE COURT: Okay. So we're already below the 13,670.

2 MS. CALLAHAN: So the 13 is the 3.4-million plus the  
3 10-million.

4 THE COURT: What 3.4?

5 MS. CALLAHAN: The amount that went to F.G.G.

6 And so the confusion why would we give -- why would we  
7 attribute that to restitution. The answer is because Count  
8 Three.

9 THE COURT: Oh, okay.

10 MS. CALLAHAN: So Count Three is where he constructed  
11 the fraudulent e-mail and wired that and basically induced  
12 C.F.E. to send the money to begin with. So but for that act,  
13 the 3.4 million would never have gone to F.G.G. at all.

14 So, Mitsubishi gets credit for the 18-million pursuant  
15 to an offset that it received under the settlement agreement,  
16 but Mr. Delgado is responsible for the remaining amounts,  
17 because Counts One and Two, he improperly acquired money and  
18 Count Three, he improperly induced C.F.E. to send the money and  
19 to representatives of F.G.G. in the first place.

20 THE COURT: Okay. I get that part, but what -- how  
21 does F.G.G. come out of here with 3-million-and-some without  
22 having to repay that?

23 MS. CALLAHAN: I don't know that --

24 THE COURT: Well, because we're charging Delgado with  
25 the 3-million-some he paid to F.G.G., if he shouldn't have done

1 that, shouldn't we get the money back from F.G.G.?

2 MS. CALLAHAN: Well, that would be to the extent they  
3 had it, but even more than that, I don't believe that F.G.G.  
4 knew that he was doing that on their behalf.

5 As a matter-of-fact, it's my understanding F.G.G. did  
6 not know even know he had diverted the money to the offshore  
7 bank account.

8 THE COURT: Right, I agree. But they sure knew it  
9 when the money came to their account. They knew it was there.  
10 They didn't give it back.

11 MS. KANOF: They did, Your Honor. F.G.G. used that  
12 money to pay Delgado for his services.

13 THE COURT: All of it?

14 MS. KANOF: Not all of it. Some of the money -- some  
15 of that \$3.4-million went back to Delgado.

16 THE COURT: Because under the contract, F.G.G. was  
17 entitled to money, right?

18 MS. KANOF: They were entitled to some money, but  
19 remember gets 68 percent of everything.

20 THE COURT: Right, uh-huh.

21 MS. KANOF: So he took or so they didn't know that he  
22 had diverted the \$10-million. So they went ahead and paid him  
23 what they thought that they owed him for what they thought was  
24 being paid on the first and second installments. So --

25 MR. HANSHEW: Your Honor, I'm going to object at this

1 point that this isn't evidence. This is pure argument. They  
2 haven't submitted a document to support any of this.

3 MS. KANOF: Mr. Gireud testified to it. Mr. Gireud  
4 testified and --

5 MR. HANSHEW: I mean what he testified to was that he,  
6 and we have documents here, that he spent nearly a quarter of a  
7 million dollars on legal fees to defend himself because he was  
8 probably a criminal in this.

9 Secondly, you heard about he bought Mercedes, I think  
10 a BMW. The list, if you may remember in cross-examination, all  
11 of the extravagance that Mr. Gireud, who they've touted over  
12 and over again as being the sole owner or the sole director of  
13 the company, he ended up with a huge share of this money.

14 THE COURT: Here's the question. At what point is  
15 F.G.G. entitled to get paid? At what point in this contract  
16 are they entitled to get paid?

17 MS. KANOF: Your Honor, they were entitled to be paid  
18 their percentage. They were entitled to distribution. When  
19 they got the distribution, they didn't get the amount they were  
20 entitled to just like Mitsubishi.

21 THE COURT: That would be another story. I don't  
22 think we can fault Delgado for that part of the contract. He  
23 may have been a criminal in other parts.

24 MS. KANOF: You can't fault F.G.G. They didn't know  
25 that.

1 THE COURT: That's what I'm saying. I'm not going to  
2 fault either one. I'm going to give Delgado credit for his  
3 payment to F.G.G. I'm going to give him credit for that,  
4 because they're entitled to that under the contract.

5 MS. KANOF: Except for the money they take back from  
6 him.

7 THE COURT: He's not entitled to get paid?

8 MS. KANOF: He induced it through fraud. He induced  
9 that payment back to himself through fraud. He already got  
10 paid. He took it off the top. So he already got paid. Now  
11 he's getting paid again, because they're unaware that he  
12 diverted the \$10-million.

13 THE COURT: Okay. So I might go with that. So how  
14 much did they give back to him?

15 MS. KANOF: Anna as a figure.

16 MS. ARREOLA: Your Honor, this is Government  
17 Exhibit 144. And I'm citing a page from the government's  
18 motion for preliminary order forfeiture and money judgment.  
19 But at least approximately \$785,200.00 was transferred back to  
20 Mr. Delgado from the funds that went to F.G.G.

21 THE COURT: Okay. So how much went to F.G.G.,  
22 3-million-450.

23 MS. ARREOLA: Pardon, Your Honor?

24 THE COURT: 3-million-450 is what went to F.G.G.?

25 MS. CALLAHAN: Yes. \$3,450,110.00.

1 THE COURT: Let me do that math real quick.

2 MR. HANSHEW: Again, for the record, Judge, we're  
3 objecting that this isn't evidence. This is just argument that  
4 the government --

5 THE COURT: You know what? I don't remember what is  
6 or isn't in evidence. It was so long ago and it was such a  
7 long trial. I'll let the Court of Appeals sort that out. I  
8 can always have Kathi dig it out before I enter an order.

9 So then I'm going to credit Delgado with \$2,665,410.00  
10 that he paid F.G.G. So, now --

11 MS. CALLAHAN: Your Honor, just as you're considering  
12 that, one thing I would ask you to note is whereas it would  
13 look like the government could recover -- since someone could  
14 recover that money from F.G.G., there's really no mechanism.

15 THE COURT: No, no. I'm not saying recover. I'm --  
16 are you saying F.G.G. is not entitled to that money under the  
17 contract?

18 MS. CALLAHAN: I'm saying that but for Mr. Delgado's  
19 acts, the money would never have been paid.

20 THE COURT: It would've been paid, but it would've  
21 been paid directly to F.G.G. All he did was divert it to  
22 himself.

23 MS. CALLAHAN: But Count Three, the fraudulent letter  
24 of credit, the contract couldn't have been fulfilled without a  
25 proper letter of credit.

1 THE COURT: Right.

2 Let's say there was fraudulent letter of credit and  
3 everybody got paid according to the contract; C.F.E. got their  
4 turbines, Mitsubishi got their money, F.G.G. got their money;  
5 and there was a fraudulent letter of credit. Would it matter  
6 if everybody got their money?

7 So what did the letter of credit do?

8 MS. CALLAHAN: It induced C.F.E. to sent the money.

9 THE COURT: And we know that and we're going tax him  
10 with the 32-million that he got, absolutely. He is going to  
11 account for the 32-million he got, but Mitsubishi got  
12 18-million of that, and so we did that math and we came up with  
13 14-million, and then we're going to give him credit for  
14 2-million-6 to F.G.G. Okay. So it looks like \$11,334,590.00  
15 out of the 32-million that he took from C.F.E. That's what's  
16 left. That's what he had his hands on that he didn't -- that  
17 wasn't paid to Mitsubishi, that wasn't paid to F.G.G., so  
18 that's 11-million.

19 MS. CALLAHAN: So then the remaining issue was, which  
20 really I don't believe is an issue that the Court can resolve  
21 today, is the settlement agreement between Mitsubishi and  
22 C.F.E. And under that settlement agreement, C.F.E. gave  
23 Mitsubishi subrogation rights to damages caused by Mr. Delgado.

24 THE COURT: Yeah. And then in this last letter they  
25 gave me, they're subrogating their rights to C.F.E., so now

1 we're going in a circle.

2 MS. CALLAHAN: We are going in a circle. And so, Your  
3 Honor, for the purposes of the restitution order which is part  
4 of Mr. Delgado's sentence, I would submit that it would be most  
5 proper for the Court just to award that amount to C.F.E. and  
6 then allow the parties to deal with their settlement agreement  
7 in the avenues that they have before them, whether it be in  
8 Mexico or the United States.

9 THE COURT: I first have to be convinced that C.F.E.  
10 lost any money, because I had two lawyers here dealing with the  
11 Court, under the requirements that an attorney deal with the  
12 Court, with candor, and I had one attorney assuring me  
13 Mitsubishi only got \$66-million and another attorney assuring  
14 me that C.F.E. paid Mitsubishi \$130-million. We're going to  
15 get to the bottom of that, before I start giving anybody any  
16 money, because as of now I'm not convinced that any of those  
17 two parties deserve any restitution.

18 MS. CALLAHAN: So we'll allow the Court to do what it  
19 needs to do.

20 I would submit, Your Honor, though, that Mr. Delgado  
21 did do something with at least \$10-million.

22 THE COURT: Absolutely.

23 MS. CALLAHAN: And whether that amount was dealt with  
24 in some sort of contractual arrangement after Mr. Delgado still  
25 spent \$10-million, and to that end, I would ask the Court.

1 THE COURT: I think by my numbers it's 11,334,059.

2 MS. CALLAHAN: Yes, Your Honor.

3 THE COURT: All right.

4 Mr. Hanshew?

5 MR. HANSHEW: Are the victims going to --

6 THE COURT: Well, they can speak to it later. They're  
7 not really a party to this restitution hearing. I'm going to  
8 try to find out from them what the truth is.

9 MR. HANSHEW: That should be interesting. That's a  
10 good start off to where I'm going to go with this, Judge, which  
11 is between the government, C.F.E. and Mitsubishi in this case,  
12 they have, in their filings and arguments, given this Court  
13 completely disparate numbers as well as legal arguments. I'm  
14 just going to kind of apologies, but read off of my notes,  
15 because it's a little bit complicated here. So you got -- I'm  
16 going to start with the government, Judge.

17 You have the P.S.R. comes out in this case earlier  
18 this year. In that P.S.R. probation recommends the restitution  
19 of the \$24-million -- I'm giving you an approximate -- but  
20 24-million and change to M.P.S.A. It recommends zero to C.F.E.

21 THE COURT: That was based on the numbers I think,  
22 that at least I thought we had sentenced on, which apparently  
23 are not.

24 MR. HANSHEW: Right. And so that's the P.S.R.

25 We timely object, Your Honor. You know you see my

1 objection. We detail why we thought that it was inappropriate  
2 in various ways in terms that have \$24-million. The government  
3 never files a response, Judge, nor do they object to those  
4 calculations.

5 THE COURT: That objection wasn't to the restitution.  
6 That objection was to determining the guideline.

7 MR. HANSHEW: No, no, it was to the restitution. I  
8 objected to the restitution. I objected to the guidelines, but  
9 I had a separate whole section. I think it was about  
10 two-and-a-half pages, Judge. In my objection, that was  
11 specifically about the restitution and explaining that, you  
12 know, it's the government's burden that has to be preponderance  
13 and explaining some of the standards as it relates to  
14 restitution, as well as saying that the numbers don't add up  
15 here in terms of the restitution figure that's been concluded,  
16 and then also asking for an evidentiary hearing. And so that  
17 would be said out there.

18 The government doesn't file its own objection to the  
19 P.S.R. nor does it file a response as it relates saying, oh,  
20 no, you know, we disagree with the P.S.R., and then they show  
21 up in court and they've essentially went with, you know, defer  
22 the probation as it relates to this, and that was 24-million to  
23 M.P.S.A., nothing to C.F.E. Okay.

24 Then we show up in court in September before this  
25 Court, and the Court frankly, I mean, rightfully was concerned

1 about the fact that it had, as it just mentioned, two lawyers  
2 get up and, you know, give differing numbers for the same exact  
3 items and as such.

4 The government doesn't object or anything like that.  
5 They don't say anything responsive. They leave it as it is.  
6 And then on December 8th, you get their most recent version  
7 where now it is, you know, the 13-million goes to C.F.E.,  
8 essentially nothing to Mitsubishi and nothing to Gireud. So  
9 that's the tracks of the government's version of this, which  
10 is, I mean, completely changed to say the least.

11 Then you look at the track of M.P.S.A. So M.P.S.A.  
12 submits their victim statements February 16th. Some highlights  
13 of that, some of which you read already, Judge, but I'll point  
14 to some other ones, is that they make sure to highlight that  
15 C.F.E. has signed its rights against F.G.G. and Delgado to  
16 Mitsubishi. All right. They put in there that they also got a  
17 \$44-million judgment against F.G.G. in Mexico. And then they  
18 have a separate section where they talk about how double  
19 recovery is not allowed. And they cite to the C.F.R.s. And  
20 they explain that C.F.E. already was compensated through a  
21 \$12,012,135.00 reduction in the price of turbines. It has no  
22 standing to seek award. So their position is that C.F.E. has  
23 already gotten paid. If they were to get more, they would be  
24 double-dipping, and they have no standing to get any  
25 restitution. Okay. And they also indicate in there their that

1 their losses are defined and concrete.

2 And they point out that C.F.E. never accepted the  
3 pledge was a forgery, which we'll remember in that settlement  
4 agreement was C.F.E. and M.P.S.A. keeping their positions, and  
5 the C.F.E. being that the pledge documents, this -- you know,  
6 the alleged fraud in this case, were actually valid. That's  
7 the position and they -- M.P.S.A. puts in there a reminder that  
8 that was C.F.E. position all along. All right. And they  
9 indicate that M.P.S.A. was the exclusive victim and that C.F.E.  
10 recognized satisfaction of its losses in the terms of the 2013  
11 settlement agreement. All right. That's back in February of  
12 '16. It's February of 2016.

13 Then, November 20th, after we had the hearing here,  
14 Judge, recently with you, where you asked the parties -- and  
15 the parties, I mean the victims and the government -- to go  
16 outside and basically get their stories straight, because  
17 they've been giving very disparate responses to the same  
18 questions and the same figures. They submit a joint statement.  
19 Okay.

20 So now M.P.S.A. is taking the position that the  
21 24-million is right, but that C.F.E. gets priority. I mean  
22 it's 100 percent the opposite of what they put in their filed  
23 pleadings with the Court in their statements in their attached  
24 affidavit. Okay. So there you got the track of M.P.S.A.

25 And then you have C.F.E. They submit in August their

1 statement, their first amended statement, where they ask for  
2 the you know \$1.3-billion. They have a figure that they put in  
3 their brief that is \$13,978,907.00, which interestingly is  
4 about \$200,000.00 more than what the government has put in in  
5 its brief.

6 Then you have in November 20th they've joined this  
7 joint statement. We've talked about that. And curiously the  
8 same exact day, they then file a supplemental statement where  
9 despite having said in the joint statement that it's 24-million  
10 and it should go to C.F.E. first, they then regurgitate back  
11 essentially their claims about this \$1.3-billion. Okay. So, I  
12 mean that's the track that you've seen with these, you know,  
13 purported victims in their claims. I mean it's -- I'm just  
14 going to call it. It's dishonest. It's not just inconsistent.  
15 It is absolutely the opposite in what they say.

16 And so, you know, here they are again. And they've  
17 got, you know, some new -- we'll hear what they have to say  
18 about whatever the new amounts are and whether they can get  
19 their stories straight, but this Court is tasked with the very  
20 difficult job, which is this isn't an estimation. This isn't  
21 like loss valuation and the such for guidelines. This  
22 restitution is actual loss.

23 And you know, Judge, these submissions, you know, I  
24 kind of analogies it to this. It's like showing up, you know,  
25 go to dinner at Pelicans, and they give you your bill and it

1 says dinner \$1,000.00. Oh, no one is going to pay that.  
2 You're going to say, hey, where's the itemization of this?  
3 Where are the specifics? You know, where does it show, you  
4 know, my salad, my chowder, my -- you know, whatever it is on  
5 there, the drinks? And then, you know, you tell the waiter,  
6 server or manager this and they come back with a bill and now  
7 it says, you know, 1,500 dinner. Okay. Well, that didn't  
8 answer the first question I have, which is where is the  
9 itemization, which is what this Court asked last time was give  
10 me the breakdown of itemization. And what do you get? A joint  
11 statement that basically asks you to sanction some settlement  
12 they've reached. This isn't a settlement. I mean, you have to  
13 determine actual loss, not what these third parties, alleged  
14 victims have claimed to be, you know, some amount they can work  
15 out amongst themselves, which by the way they didn't. And, you  
16 know, then you raise the issue again, hey, where's the  
17 itemization and how did it change from a 1,000 to 1,500, and  
18 then they come back and they give you a bill for 500 with no  
19 itemization. I mean that's where you are.

20 I have searched up and down in case law. You know,  
21 I've been involved with restitution hearings with some  
22 significant numbers previously, Judge, but never of  
23 \$1.3 billion at the high end and at the low end \$24-million. I  
24 mean, these are astronomical numbers. And they are asking you  
25 to give an award to those based on two affidavits, not a

1 singular witness. I've never seen a restitution hearing for  
2 values less than this where they don't have a singular witness  
3 they bring in. They give you two declarations; one, from  
4 Matamora [sic]. It's in English. You'll remember, he had to  
5 have a translator here to testify in Court. And I'm sure they  
6 remembered that, because they put in the beginning of it that  
7 his English skills are sufficient enough to fill out a, you  
8 know, under oath, declaration that asked for \$1.3-billion. I  
9 mean, how reliable is that start. The reliability of that is  
10 about zero, if you ask me, when you saw this gentleman in here,  
11 you know, refusing to be able to speak any English, yet, he can  
12 submit a \$1.3-billion request in affidavit and it's conclusory.  
13 It doesn't give you -- it doesn't break down your dinner. When  
14 am I paying for 1.3-billion?

15 THE COURT: I wasn't particularly moved by that when I  
16 saw it.

17 MR. HANSHEW: Right. And that's the whole basis  
18 for --

19 THE COURT: Here's the numbers. You heard my numbers.  
20 If you want to address those, that's the only real numbers I  
21 have. All of that other stuff...

22 MR. HANSHEW: And they've been paid as M.P.S.A. put in  
23 their first version in this. They already got paid. They'd be  
24 double-dipping for this. They all got paid, Judge. They all  
25 got what they bargained for. They got better deals. And they

1 even point to each other to point the same out. I mean they  
2 pointed it out that none of them are entitled to restitution.  
3 If they really have the proof, they would've shown up with a  
4 witness, a witness that could sit here and we could all spend  
5 time, myself, the government and Your Honor, asking them to  
6 give you what you asked for last time; give me the numbers,  
7 give me the breakdown, show this to me. They don't do that.  
8 Why? They can't. They can't prove it. And they sure as heck  
9 don't want to subject one of their witnesses to either perjury  
10 or our cross-examination to get to the actual facts, to the  
11 numbers. Where do these come from? I mean, they're  
12 outrageous. You see storage fee of \$9-million. I mean, that's  
13 the -- you know, there's your dinner bill. I mean, here you  
14 go. What did that entail? What did this -- and, you know, all  
15 of these things that you see, that's what they asked for.

16 So you know, we're asking the Court, one, to find that  
17 they haven't provided any sufficiently reliable evidence and to  
18 support these claims, as well as the fact that in this case  
19 there is no actual loss to any of the alleged victims in this  
20 case.

21 I thank you for your time, Judge.

22 THE COURT: All right. Thank you, Mr. Hanshew.

23 MS. KANOF: Your Honor, Ms. Callahan -- oh, I'm sorry.

24 May I respond, Your Honor?

25 THE COURT: Yes, ma'am.

1 MS. KANOF: Ms. Callahan is going to respond to most  
2 of what Mr. Hanshew said, but I need to correct the record.

3 THE COURT: Okay.

4 MS. KANOF: Mr. Hanshew said the government did not  
5 respond to his restitution objections and I'd like to direct to  
6 the Court E.C.F. 271-1, which is the government's letter in  
7 response -- to Sandra Torres in response, beginning: By this  
8 letter the government responds and disagrees with the below  
9 referenced parts of defendant Delgado's objections to the  
10 presentence investigation report.

11 And there are two full paragraphs under the heading  
12 restitution in which the government details how it disagreed  
13 with the defendant's analysis and how it agreed with the  
14 probation department with figures included.

15 So I just wanted to correct the record, because that  
16 is not true that the government did not respond and it's in a  
17 public filing.

18 Secondly, I'd like to tell the Court that when I read  
19 the restitution part of the presentence report, I called  
20 Ms. Torres. And I talked to her fairly extensively about how  
21 she got the figures and how she came to this conclusion,  
22 because I wanted to be assured that she understood that there  
23 was some case law cited by Mitsubishi in their impact statement  
24 that implied that C.F.E., as a sovereign of a foreign country,  
25 could not take restitution, and I wanted to make sure she had

1 not relied on that. And she reassured me that she did not rely  
2 on it since she awarded all restitution to Mitsubishi. She  
3 assured me she disregarded that case law.

4 So at that time, this seemed like a reasonable way  
5 to -- that the probation department's conclusion seemed  
6 reasonable. But I just for the record have to say that that  
7 was a misstatement. We absolutely did respond publicly in a  
8 public file.

9 MR. HANSHEW: And Judge, to be clear, what I said was  
10 they didn't object to the figure that was in the restitution,  
11 the 24-million to the M.P.S.A. That's what I'm saying is they  
12 didn't object either on their own or in response to me to that  
13 figure, and in fact they went along with it, and yet now,  
14 they've completely changed their position on it in terms of  
15 both the amount by half as well as who it goes to. That's what  
16 I was saying they didn't respond.

17 THE COURT: They brought their expert.

18 That's you, Ms. Callahan.

19 MS. CALLAHAN: So the government did change. To be  
20 honest, it did. And the reason it changed is because it is an  
21 officer of this Court and is bound by federal law.

22 And so to be fair to Mr. Hanshaw when I read his  
23 objections, I went back and I did a legal analysis and I said,  
24 okay, so these contract rights are a problem here. The reason  
25 they're a problem is there is a lot that goes into contractual

1 negotiations. And we have international players here. But  
2 that's not what we look at in restitution. What we look at is  
3 what are the counts of conviction and what compensable harm  
4 stem from those accounts of conviction. And that's the  
5 analysis that the government put before this Court.

6 There is a number that we can't account for. That's  
7 the money that Mr. Delgado spent. And neither C.F.E. nor  
8 Mitsubishi should be tagged for that amount.

9 Mr. Hanshew didn't say that the government's analysis  
10 was wrong. He said we've gone from here to there and back  
11 around. And I don't deny that. It's on the record. But  
12 today, before this Court, is the proper analysis. And Mr.  
13 Delgado should pay for the losses that he caused. And what he  
14 caused, no one else should have to pay. He spent over  
15 \$10-million. Contrary to the defense, this is evidence before  
16 this Court. It's in government Exhibit Number 2 of the trial.  
17 It's also shown in the P.S.R. That is all before this Court.  
18 These aren't magical numbers. These are hard fast numbers and  
19 they weren't objected to previously.

20 What's objected to now is the math that we did to get  
21 there. But I submit to this Court, the number is right.  
22 Mr. Delgado should pay for the harm he caused by spending other  
23 people's monies and the number should be the 11-million that  
24 the Court Hales already arrived at.

25 THE COURT: All right. Thank you, Ms. Callahan.

1 All right. Mr. Maney, if you have a challenge to the  
2 Court's determination that's the \$11-million-334, reminding you  
3 of your duty of candor to the Court, if you'd like to address  
4 the Court, I'm happy to hear what you have to say.

5 MR. MANEY: Your Honor, I think your number is correct  
6 in terms of how much money Mr. Delgado pocketed. And according  
7 to the restitution statute, according to the U.S. Supreme  
8 Court, that money was -- and by the jury -- that money was  
9 taken from C.F.E., and the restitution statute is to be  
10 returned to its owner, which is the C.F.E. and I agree with  
11 that amount.

12 I'm not saying that our numbers on what C.F.E. lost,  
13 their actual damages, which did go over a billion dollars, were  
14 more than \$9-million to get these same turbines, were more than  
15 \$90-million to finish this plan on what was budgeted, because  
16 of the delays. But in terms of the diversion, the C.F.E.  
17 property that Mr. Delgado pocketed that should be returned to  
18 C.F.E., yes, that's the simple number and we agree with that.  
19 And given how much larger that sum is than the amount of  
20 property that we can trace from Mr. Delgado, I see no point in  
21 trying to figure out a higher number.

22 THE COURT: All right.

23 Mr. Herrington?

24 MR. HERRINGTON: Your Honor, I want to start by saying  
25 it's privileged to be here in your courtroom this afternoon.

1 I'm from Washington and I get a lot of grief when I travel the  
2 country about how things are messed up in Washington, but I'm  
3 going to say that things are a little messed up here in El  
4 Paso, because I've been practicing law 24 years. I've never  
5 had a man come up to this podium and accuse me of being  
6 dishonest with this Court.

7 (Counsel speaks to Mr. Hanshew.)

8 MR. HERRINGTON: And I recent it, sir, and it's  
9 unfounded.

10 MR. HANSHEW: It's in your pleadings, for the record,  
11 and your pleadings are absolutely inconsistent, so you should  
12 file claims that don't contain --

13 THE COURT: Mr. Hanshew.

14 All right. Woe, woe, woe.

15 You guys can talk about that outside. In here we're  
16 just going to deal with the Court.

17 MR. HERRINGTON: And if Mr. Hanshew were able to read  
18 to the second page, would have a point. But what the filing  
19 says is that M.P.S.A. and C.F.E., C.F.E. will be given priority  
20 such as any awards to M.P.S.A., shall be subordinated except  
21 with the prior clause being of no effect if there's no award in  
22 favor of C.F.E.

23 And you know, I think it's a little strange here that  
24 a victim here is somehow to blame for these numbers, because I  
25 thought we had a process in here in El Paso, and I thought that

1 process was that I engaged with the probation office and that I  
2 submitted a serious document that doesn't say \$1.3-billion, but  
3 that runs out exactly how you get to the 24-million that I have  
4 claimed.

5 And I reject and resent any implication that I've been  
6 anything but perfectly candid with this Court, Your Honor. And  
7 this --

8 THE COURT: Well, in --

9 MR. HERRINGTON: -- this shows where the number comes  
10 from.

11 THE COURT: Then I need an explanation from Mr. Maney  
12 as to his statement that C.F.E. paid Mitsubishi \$130-million  
13 for the machines, because I asked him specifically, "Is this  
14 for the machine and not for any kind of service contract or  
15 anything else?" "Absolutely. 130-million for the machine."

16 You told me that Mitsubishi received only \$66-million  
17 for the machine. So we have a huge inconsistency. Maybe that  
18 wouldn't be inconsistent in Washing, but it's inconsistent in  
19 El Paso.

20 MR. HERRINGTON: I know --

21 THE COURT: So, I need -- I need for you two to figure  
22 out how much was paid for the machine, because it might be that  
23 Mitsubishi got the money that they bargained for and you're --

24 (Counsel interrupts the Court.)

25 MR. HERRINGTON: Well, that is -- that is set out in

1 in Mr. Beddard's affidavit, Your Honor.

2 THE COURT: No, we're not talking about Mr. Beddard.  
3 I'm talking about Mr. Maney saying that C.F.E. paid you  
4 \$130-million you for the hard equipment --

5 MR. HERRINGTON: Well, he's going to have to --

6 THE COURT: -- is that true or is that not true?

7 MR. HERRINGTON: That's not --

8 THE COURT: It's either true or it's not true.

9 MR. HERRINGTON: It's not true.

10 THE COURT: I'm going to get him up here in a minute  
11 and tell him why he told me that then.

12 MR. HERRINGTON: Okay. Well, he can --

13 THE COURT: All right. Come on up here, Mr. Maney.  
14 Tell me why you told me that last time. I can have my court  
15 reporter read back the record.

16 MR. MANEY: Your Honor, my memory of what I told you  
17 is that we paid 130-million for what we contracted for with  
18 F.G.G., everything we contracted for.

19 THE COURT: Kate, look it up and figure out what I  
20 asked Mr. Maney last time we were here.

21 (Court Reporter inquires with the Court.)

22 THE COURT: I asked you about the machine. I was  
23 clear about it, because it shocked me when I heard you say it.  
24 It shocked me, that I would get two inconsistencies like that  
25 from two licensed lawyers in this very courtroom. And I made

1 it clear we were talking about the machine and not any service  
2 contract.

3 MR. MANEY: I remember trying to tell you that that --  
4 the machine isn't isolatable [sic] in the F.G.G. contract. It  
5 was not for the service contract. The service contract is  
6 entirely separate.

7 THE COURT: So you paid 130-million for what?

8 MR. MANEY: The F.G.G. contract included --

9 THE COURT: No, no. No. You paid Mitsubishi  
10 130-million for what?

11 MR. MANEY: For everything that F.G.G. was supposed to  
12 supply.

13 THE COURT: And what is that?

14 MR. MANEY: The machines, delivery of the machines,  
15 which Mitsubishi originally was not to provide, the warranties  
16 on the machines, installation of the machines and the deicing,  
17 some of the equipment that they didn't tell Mitsubishi was  
18 supposed to be on the equipment.

19 THE COURT: And that's what they had contracted with  
20 you for \$120-million for?

21 MR. MANEY: No. We contracted with C. -- with F.G.G.  
22 for all of that.

23 THE COURT: For 120 --

24 MR. MANEY: We eventually paid 129 -- we paid  
25 \$9-million more for the same stuff we were supposed to get from

1 F.G.G.

2 But Your Honor, in terms of the restitution, this  
3 isn't a victimless crime. Even if we worked out our deals,  
4 this man pocketed over \$10-million --

5 THE COURT: And I'm willing --

6 MR. MANEY: (Indiscernible.)

7 THE COURT: -- to make him pay that, but I think if  
8 you all are asking me to go beyond that to cover your losses,  
9 then we've got to figure out what those are, because I'm not  
10 just going to accept what you're giving me so far, because it  
11 is absolutely confusing and counterindicative. So, if you want  
12 that, we're going to be here for a long time. If you are  
13 satisfied -- if Mitsubishi is satisfied with the amount I came  
14 up with, we're done.

15 MR. MANEY: Well, that's up to Mitsubishi.

16 MR. HERRINGTON: Your Honor, I remember saying the  
17 exact same thing that last time I was, which is the reason  
18 there's confusion about this is because of Mr. Delgado, because  
19 he promised C.F.E. one thing in the contract between F.G.G. and  
20 C.F.E., and he bought something else in the contract between  
21 F.G.G. and M.P.S.A., and that's where the different numbers  
22 come from.

23 And if Mr. Hanshew can't figure that out without  
24 calling people dishonest, then he should go back and work with  
25 his calculator.

1 I believe that we should pay some attention to the  
2 process in this courthouse that the conclusions reached by the  
3 probation office were correct, and that clearly exploitation of  
4 the document that Mr. Delgado forged caused damages as set  
5 forth in the V.I.S. to Mitsubishi.

6 THE COURT: And what were the probation numbers that  
7 you're touting?

8 MR. HERRINGTON: The probation office returned the  
9 24,797,717.

10 THE COURT: How did they get there? How did they come  
11 to that number?

12 MR. HERRINGTON: Okay. They came to that number.  
13 This is all set out in the Beddard affidavit.

14 THE COURT: Uh-huh.

15 MR. HERRINGTON: That number is, that the original  
16 value of the contract was 102-million, so that's what  
17 Mitsubishi expected to get. What Mitsubishi got instead was  
18 18-million from the Turks and Caicos account and then  
19 76-million under the 2013. It's 76 987, so if we call that 77,  
20 that adds up to \$95-million.

21 So, for starters --

22 THE COURT: Wait, wait, wait.

23 You have 102 and we're going to subtract from that  
24 25-million that you got?

25 MR. HERRINGTON: No. We're going to tract from that

1 77 plus 18, which is 95-million.

2 THE COURT: 77 plus 18 equals 95?

3 MR. HERRINGTON: Yes.

4 (Counsel speaks directly to Mr. Herrington.)

5 MR. HANSHEW: You want my calculator?

6 THE COURT: 77 plus 18...

7 MR. HERRINGTON: Is 95.

8 THE COURT: Not here in El Paso. That's 25.

9 MR. HERRINGTON: 77 plus 18.

10 THE COURT: Oh, I'm sorry. Okay. 95.

11 So you got -- where did you get the 77 6 from C.F.E.?

12 MR. HERRINGTON: Yes. Page -- paragraph ten of the  
13 Beddard affidavit properly before you.

14 THE COURT: And so why -- and they were saying that  
15 they paid you \$130-million. Okay. Hold on. So they're paying  
16 you -- they paid 77 6. They paid 32 over there, so that's 99  
17 6, so they got the turbines for 99 6, C.F.E. They paid 32 to  
18 Delgado.

19 MR. HERRINGTON: Right.

20 THE COURT: Paid you 77. That's 99 6.

21 MR. HERRINGTON: Correct. And then because of  
22 these -- because of Mr. Delgado's crimes, and the way he set up  
23 this transaction, all of the other things that Mr. Maney spoke  
24 to had to be gotten in there. And so as set forth in the  
25 Beddard affidavit, where you see there's additional work for 13

1 and the storage time for 4.5.

2 And maybe you don't accept those. Maybe you do.  
3 Maybe you think those are different from the seven that  
4 Mitsubishi just didn't make out under the contract, but the  
5 idea that these numbers aren't properly before you and don't  
6 add up is just simply not accurate, Your Honor.

7 THE COURT: Well --

8 MR. HERRINGTON: And it seems to me there was some  
9 point to all of the time I spent with the probation office  
10 going through this, and the probation office coming to a  
11 report, and then we sat here in this courtroom and United  
12 States Attorney's Office said they agreed with that report, and  
13 now today we get a different theory. And as to the different  
14 theory, what I would --

15 THE COURT: Here's what we can do what I suggested  
16 last time. That you all actually produce a written document,  
17 not the Beddard affidavit, a written document describing all of  
18 these different things, how much you've spent, what they were  
19 spent for, so I can actually look at some hard numbers, not  
20 just generally this much for storage. I --

21 MR. HERRINGTON: Every single number is in the Beddard  
22 affidavit. And how you get to 13-million, it's all there.

23 THE COURT: This doesn't add up to me. So I'm not  
24 sure how they get to 130-million. How do they get to  
25 130-million?

1 MR. HERRINGTON: See, because they had to pay for  
2 things that were never part of the Mitsubishi contract like the  
3 delivery and like the warranty that Mr. Delgado had promised  
4 them, but had never contracted to get from M.P.S.A.

5 So, there's lots of victims here for Mr. Delgado's  
6 crimes.

7 THE COURT: I totally agree with that, but I need  
8 to -- you need to make it clearer for me, because I'm not  
9 understanding that and I'm not getting it. So if you need  
10 to -- what I would like is for you to point out directly to the  
11 Delgado contract with C.F.E., the F.G.G. contract with you, and  
12 how all of these things were included in the contract with  
13 C.F.E., but not included with the contract with you. So I  
14 don't understand. I mean, you're saying that they contracted  
15 with you to deliver the units where?

16 MR. HERRINGTON: The -- well, the contract originally  
17 provide that -- see F.G.G. promised that they would deliver  
18 them to Mexico to the Agua Prieta site.

19 THE COURT: So you were going to deliver them where?

20 MR. HERRINGTON: The contract with M.P.S.A., they were  
21 F.O.B. So the transporting them --

22 THE COURT: Was F.G.G.'s deal?

23 MR. HERRINGTON: Was going to be on F.G.G., but of  
24 course they didn't do that and they couldn't do that.

25 THE COURT: So you were going to -- it was 102-million

1 for the turbines right where they were at.

2 MR. HERRINGTON: Right. And what we got for them  
3 instead was 95. And that is probably the simplest way to look  
4 at these numbers.

5 THE COURT: So you were out 70-million on the  
6 turbines.

7 MR. HERRINGTON: Right, just on the machines.

8 THE COURT: All right. This is sounding clearer.

9 MR. HANSHEW: Your Honor, for purposes of the record,  
10 so that nobody says I've waived anything, obviously, we object  
11 to counsel giving argument in place of actual evidence in this  
12 matter, Judge.

13 MR. HERRINGTON: And Your Honor, for the record, I've  
14 cited every number I've given you to the Beddard affidavit.  
15 That man testified in front of you and so this is properly  
16 before you.

17 THE COURT: And so F.G.G. was then going to install  
18 those turbines, transport them from wherever they were in the  
19 world, take them to Agua Prieta and install them and set them  
20 up. And that was going to be done for 120-million.

21 MR. HERRINGTON: We never saw that contract that  
22 F.G.G. had with C.F.E. So we didn't know how they were going  
23 to do that or if they were going to come back and contract with  
24 us separately for that.

25 THE COURT: Well, but that wasn't your concern --

1 MR. HERRINGTON: Right.

2 THE COURT: -- because that was in the contract.

3 MR. HERRINGTON: So if you just want to talk about the  
4 machines, it's 102 minus 95.

5 THE COURT: Okay. It's 7-million that you've lost  
6 already.

7 If he paid 32-million and then they paid you for the  
8 machines --

9 MR. HERRINGTON: 18 out of that.

10 THE COURT: No, they paid 32-million that was taken by  
11 Delgado. Then they paid you directly for the machines, was 63  
12 681. What was the price of the machine?

13 MR. HERRINGTON: What were they paid or what was the  
14 price?

15 THE COURT: What did C.F.E. pay you for the machines?

16 MR. HERRINGTON: 18-million, which was in the first  
17 trash that went through F.G.G.

18 THE COURT: No, no, no. I'm talking about after all  
19 of that, when everything --

20 MR. HERRINGTON: After -- in the settlement?

21 THE COURT: -- when it blew up, when it blew up, then  
22 you contracted with C.F.E. directly.

23 MR. HERRINGTON: Right. When it blew up and then  
24 C.F.E. used the fraudulent pledge to bring a lawsuit in Mexico,  
25 and then we settled that case, they paid 76,987,745, which is

1 in paragraph 10 of the Beddard affidavit.

2 THE COURT: So they paid as part of that settlement?

3 MR. HERRINGTON: Yeah. And in turn they got the  
4 turbines.

5 THE COURT: Okay. So then they got the turbines for  
6 98.

7 MR. HERRINGTON: 95, I think, Your Honor; 77 plus 18.

8 THE COURT: Well, but they paid -- they actually paid  
9 Delgado 32-million for the turbines.

10 MR. HERRINGTON: Yeah. I think one of the things  
11 that's confusing about this is you can look at it from -- you  
12 can ask the question: What did Delgado steal? You can ask the  
13 question: What did Mitsubishi get damaged by? Or you can ask  
14 the question: What did C.F.E. get damaged by? And one of the  
15 reasons there is different numbers is because those are three  
16 analytically distinct questions.

17 THE COURT: And so we're trying to figure out what  
18 each of the parties lost. To me, Delgado pocketed  
19 11-million-334. So now I'm trying to figure out how much  
20 C.F.E. is out, because they paid Delgado 32-million, and then  
21 they paid you, you're saying, 76-million. But didn't that  
22 76-million include 13,306,000 for the additional services?

23 MR. HERRINGTON: No, the additional work, that  
24 13-million, we would say should have been on top of that. So  
25 the 76 987 was for the turbines.

1 THE COURT: Well, did you have a contract with C.F.E.  
2 to provide the turbines and the additional material?

3 MR. HERRINGTON: That's part of the settlement  
4 agreement in 2013.

5 THE COURT: That's 108-million or not?

6 MR. HERRINGTON: Well, the total revenue under that  
7 totals up to 95-million.

8 THE COURT: Okay. Break it down for me.

9 MR. HERRINGTON: Well, the amount of money that  
10 changed hands --

11 THE COURT: No. I want to know how much the cost of  
12 the additional work.

13 MR. HERRINGTON: Well, the cost of the additional work  
14 was 13-million.

15 THE COURT: How much? 13?

16 MR. HERRINGTON: Yes. That's in paragraph eight of  
17 the Beddard affidavit.

18 THE COURT: Right. That's 13,306,610, right?

19 MR. HERRINGTON: Right.

20 THE COURT: Okay. So C.F.E. paid you \$76,987,745.

21 MR. HERRINGTON: Right.

22 THE COURT: So that means that they paid for the  
23 turbines 63,681,135 --

24 MR. HERRINGTON: Oh, I see.

25 THE COURT: Because they paid 13 306 for the addition.

1 MR. HERRINGTON: I see what your doing. That's a  
2 sensible way to look at it, yes.

3 THE COURT: Okay. All right. So C.F.E. paid  
4 32-million to Delgado. And then they paid 63-million to you  
5 are for the turbines. That would make 95-million-681. That's  
6 what C.F.E. paid for the turbines.

7 Now, originally I thought they had gotten a windfall,  
8 because it was less that is 120-million, but now apparently  
9 F.G.G. had the contract to provide other matters. I thought  
10 that contract was 120-million, plus additional for the other  
11 things. Is that not -- where is that contract? Does anybody  
12 have that contract? Where is it?

13 MR. HERRINGTON: The original contract with F.G.G.?

14 THE COURT: Yeah.

15 MS. KANOF: It's in evidence.

16 THE COURT: Not between you and F.G.G.; between F.G.G.  
17 and C.F.E.

18 MR. HERRINGTON: Right. The C.F.E./F.G.G. contract  
19 was \$121-million.

20 THE COURT: Okay. That was for what?

21 MR. HERRINGTON: That was for the turbines plus all of  
22 these other things that M.P.S.A. ended up providing.

23 THE COURT: Okay. Well, can we read from the  
24 contract? I mean, can we see that? That's what I was hoping  
25 would be provided today in a written form.

1           MR. HERRINGTON: Okay. So the contract with F.G.G.  
2           and C.F.E. -- and Mr. Maney, correct me if I'm wrong --  
3           provided for both the turbines and the delivery and the  
4           deicing, the things we call the additional work.

5           THE COURT: Because I thought from reading the  
6           presentence report that it was 120-million, plus some  
7           additions.

8           MR. MANEY: No. There was a service contract that was  
9           being -- was not issued, which was for more than 100-million.  
10          Think of it this way. If I want to get a furnace in my house,  
11          this was to have the furnace put in my house and get it  
12          running, then a long term warranty service contract for that  
13          furnace, we didn't get to the second contract. But the first  
14          one was to deliver these. And moving these turbines from Japan  
15          and Dunkirk, France to Agua Prieta, Mexico was not cheap.  
16          Plus, there had to be changes to the turbines, because the  
17          turbines represented by F.G.G. to C.F.E. were not the same as  
18          they were buying from Mitsubishi. They didn't have deicing for  
19          one thing, because they were designed to go I think to Brazil  
20          or somewhere in South America.

21          MR. HANSHEW: Your Honor, I guess I would ask for a  
22          running objection, Judge, so I don't have to keep interrupting.

23          THE COURT: Sure. That's fine.

24          I remember this testimony.

25          MR. HANSHEW: Well, except for it's not testimony,

1 because he's not under oath --

2 THE COURT: I remember the testimony from the witness.

3 MR. HANSHEW: -- that's subject to cross-examination.

4 THE COURT: I remember the testimony from the witness.

5 MR. HANSHEW: I understand, Judge. I'm making a  
6 record, Judge --

7 THE COURT: Sure.

8 MR. HANSHEW: -- which is a running objection to all  
9 of their arguments here --

10 THE COURT: You got it.

11 MR. HANSHEW: -- that are being made in place of  
12 actual evidence.

13 THE COURT: You absolutely --

14 MR. HANSHEW: Thank you, Your Honor.

15 MS. KANOF: And Your Honor, since everybody is  
16 talking, you know I can't resist. E.C.F. 263-1, which is the  
17 presentence report, has a lot of these numbers in it. Page 11  
18 has the original \$121-million and says what it's -- generally  
19 says what it's for, how much for each of the gas turbo  
20 generators and for the steam generator.

21 Page 16 shows when they moved it down to 106. Page 17  
22 shows -- and they derive it directly from the exhibits in the  
23 case; probation does -- shows the 103. And then if you --  
24 which they had ultimately negotiated for.

25 And then on page 33, paragraph number 85, Officer

1 Torres explains that based on the investigation -- and we had a  
2 lot of testimony about this -- in order to get it done, they  
3 dropped it one more million dollars, so that came to the 102,  
4 and it's on page 33 of 263-1.

5 So a lot of these figures that they're talking about  
6 are subsumed in the P.S.R.

7 THE COURT: All right. I'm just trying to figure out  
8 what the additional are. I mean because we know it's --

9 MR. HERRINGTON: Your Honor, if you look at page --  
10 paragraph eight of the Beddard affidavit, it runs through each  
11 of the elements that total up to the \$13-million.

12 THE COURT: No, I am talking about the contract  
13 between F.G.G. and C.F.E.

14 MR. HERRINGTON: Okay. That one I can't speak to.  
15 Mr. Maney --

16 THE COURT: Right. So I want to know what the  
17 delivery cost, if that's broken out, what the changes were...

18 MR. MANEY: Well, I think most of it through the  
19 \$13-extra-million we paid to Mitsubishi.

20 THE COURT: See, that's not going to work. I mean I  
21 need to know -- if we're going to do this, then we're going to  
22 do it by detail. So I want to know what the delivery charges  
23 are. These changes, I don't know if that happened as a result  
24 of this offense or if that was just bad contracting, which is a  
25 contracting issue and is not part of the restitution issue.

1 MS. KANOF: Your Honor, I believe Mace Miller  
2 testified that there was this other company in Houston that's  
3 called (indiscernible) for the delivery, and that delivery was  
4 not part of the original contract that --

5 THE COURT: So that was not part of the 121-million?

6 MR. MANEY: No, no. That wasn't part of the original  
7 Mitsubishi contract.

8 MS. KANOF: Right.

9 MR. HERRINGTON: It was part of the F.G.G./C.F.E.  
10 contract.

11 THE COURT: All right. So...

12 MR. MANEY: I understand the F.G.G. contract with  
13 C.F.E. it was turbines working in Agua Prieta --

14 MR. HERRINGTON: Right.

15 MR. MANEY: -- Mexico, not in Dunkirk not in Japan.

16 MR. HERRINGTON: And with the are freeze protection  
17 and everything else.

18 MR. MANEY: Yes. That was an existing warranty where  
19 if they were buying them from Mitsubishi as is, so we had to  
20 buy warranties that didn't exist. So, everything that they  
21 were supposed to get in the \$121-million contract ended up  
22 costing them \$130-million.

23 THE COURT: C.F.E. had to pay \$130-million for what?

24 MR. MANEY: Total everything they were supposed to get  
25 out of the 121, not counting chain -- delays in the plans. The

1 construction cost 90-million more for the whole plant, but just  
2 what the F.G.G. contract was there for.

3 But the sentencings guidelines say that if you have a  
4 procurement problem, the restitutional damages are the entirety  
5 of the excess cost of fixing it that. That was \$99-million.  
6 The larger number is the cost to replacing the electricity,  
7 which they had to buy from the U.S. market.

8 THE COURT: All right.

9 Ms. Callahan or Ms. Kanof or Ms. Arreola, what  
10 about -- and I think I had asked you this once before -- the  
11 claim that because this money, the \$32-million Mr. Delgado took  
12 to the Turks and Caicos island, you-all captured it there, that  
13 is Mexican money that's sitting there. It's a property that  
14 belongs to the Mexican government that they now want. That's  
15 what -- I think that's what he is telling me; that that's their  
16 money and they want to back. That's not a fungible deal.  
17 That's actually their dollars and there's something that says  
18 that somewhere or something.

19 MS. CALLAHAN: And in that respect, they should be  
20 thankful to the United States for capturing it, because absent  
21 our forfeiture laws, it wouldn't be frozen right now, and  
22 without the ability to forfeit and then restore it under the  
23 Attorney General's guidelines, they would get nothing.

24 THE COURT: All right. Well, I think this is a mess.  
25 There's -- there is a standard preponderance and I am not sure

1 we've reached that. So I'm just going to go with the  
2 11,334,590 and that's what he owes in restitution.

3 Now, this restitution, Ms. Callahan, do I make this  
4 payable to C.F.E., to the Mexican government or to the United  
5 States?

6 MS. CALLAHAN: Yes, Your Honor, it's payable to the  
7 victim, which is C.F.E. They'll need to supply the clerk with  
8 a that information. What can happen is to the extent that  
9 C.F.E. and Mitsubishi reach some sort of agreement regarding  
10 who the proper payee is, meaning, they have other contract  
11 rights, the government can move this Court to substitute a  
12 different payee, but we're not going to do that today. They  
13 have to work that issue out.

14 THE COURT: How much money is -- what are we talking  
15 about; is it just the \$2-million?

16 MS. CALLAHAN: No, Your Honor. He has other  
17 properties. So when this Court sentences him to pay the  
18 11-million, at that moment a lien arises in favor of the United  
19 States, and the United States will then begin to execute and  
20 foreclose on that lien. He has a homestead, I believe, here in  
21 El Paso.

22 THE COURT: What is that worth?

23 MS. CALLAHAN: I'm sorry?

24 THE COURT: What is that worth?

25 MS. CALLAHAN: I believe it's worth in the nature of

1 300,000. I'm actually going to go look at it later today.

2 And then he has a condo, that I don't has a lot of  
3 equity, in Taos, New Mexico. And then from that, Your Honor, I  
4 will be looking to see what else he might have.

5 THE COURT: Well, I feel very comfortable ordering the  
6 11. I'm not so comfortable ordering beyond that unless I have  
7 all of those contracts in front of me where I can look at all  
8 of those things and compare it apples to apples to see what the  
9 agreement was with C.F.E. and what was delivered by Mitsubishi  
10 and then the different...

11 MS. CALLAHAN: Your Honor, not to diminish the  
12 victim's losses here or to undermine the loss that Mr. Delgado  
13 did, but what we do recognize is federal saw, that there's just  
14 some damages that are better suited for civil proceedings. And  
15 I believe that in this case, we're deep in the contract law and  
16 negotiations and so forth. In addition to Mexican federal law,  
17 there're just some of those damages that in my mind are better  
18 left to civil proceedings than a restitution hearing.

19 THE COURT: Well, I think I certainly agree with that.  
20 And I know Mr. Herrington suggested that the last time we were  
21 here. He didn't want to turn this into a trial on these  
22 damages. And neither do I, because it seems to me like I'm a  
23 long way away from feeling comfortable about all of those other  
24 contracts, because I have not seen them. I don't know what  
25 exactly he contracted for or what he didn't.

1           So they have a judgment against Mr. Delgado somewhere,  
2     don't they?

3           MR. HANSHEW: Judge, if I could offer, there's a  
4     provision in the statute, section nine (indiscernible); you're  
5     an expert -- you're probably aware of the brief --

6           THE COURT REPORTER: Could you speak up, Mr. Hanshaw?

7           MR. HANSHEW: -- 3663(A) at the end. And I can  
8     show... Right. It says that this section not apply in the case  
9     in offense described in paragraph 1A2, if the Court finds from  
10    the facts on the record that either the number of identifiable  
11    victims is so large as to make restitution impractical or --  
12    and I think this the relevant one here -- determining complex  
13    issues of fact related to the cause or amount of victim's  
14    losses would complicate or prolong the sentencing process to a  
15    degree that the need to provide restitution to any victim is  
16    outweighed by the burden on the sentencing process.

17           So I just offer that to the Court in terms of it's  
18    a -- I mean, we would argue that frankly that would apply to  
19    everything in this case, in addition to, obviously, to all of  
20    our other objections that we've lodged in terms of the  
21    calculations of reliability and lack of evidence. But for the  
22    Court's purview, that statute there provides another vehicle to  
23    deal with this.

24           MS. CALLAHAN: And Your Honor, I find myself in  
25    difficult territory, maybe having to partially agree with the

1 defense, but nevertheless I would agree that as it pertains to  
2 those contract amounts and those losses, that is certainly the  
3 case here.

4 THE COURT: And Mitsubishi has a judgment against  
5 Mr. Delgado for 44-million?

6 MS. CALLAHAN: They have a judgment against F.G.G.,  
7 which largely, Your Honor, is uncollectible.

8 THE COURT: So is that like 66 percent of that is  
9 Mr. Delgado's liability since he owns -- that whole F.G.G. was  
10 invented just to do this deal, and apparently he owned  
11 66 percent of any profit. So I guess that's 66 percent his.

12 MS. CALLAHAN: Correct.

13 THE COURT: Yeah, I think a civil court will develop  
14 some deep discovery rules and figure where all of that it is.

15 I don't think you're going to be able to recover more  
16 than one \$11-million.

17 MS. CALLAHAN: No, Your Honor.

18 THE COURT: We're just trying to spin our wheels to  
19 try to figure this out, so I'm going to leave it at that.

20 I'm going to order restitution in the amount of  
21 \$11,334,590 to the Comisión Federal de Electricidad, the  
22 Mexican power company. And I'm not going to order any interest  
23 on that. I don't see that the defendant is going to have even  
24 the ability to pay that amount, much less the interest, so  
25 that'll be the judgment of the Court.

1 All right. Anything else from either side?

2 MS. KANOF: Nothing further from the United States.  
3 Wait. Okay.

4 MS. CALLAHAN: Your Honor, although the Court will  
5 enter an order, it will need to amend the judgment so we'll  
6 have a first amendment judgment that contains the restitution  
7 amount.

8 THE COURT: Did we do the judgment already?

9 COURTROOM DEPUTY DUEÑAS: No.

10 THE COURT: We'll do it. Yes, ma'am. All right.  
11 Okay.

12 MR. HANSHEW: Judge, record-keeping-wise, here I am  
13 again. Sorry.

14 THE COURT: Sure. Yeah. Absolutely.

15 MR. HANSHEW: Judge, we object to the that conclusion.  
16 Obviously, for all of the reasons that have been stated in  
17 writing, as well as orally at this hearing and as well as the  
18 September hearing on this matter.

19 We'd also request that the Court issue a written  
20 finding of facts and conclusions on this as to what fact and  
21 evidence it relied on to reach these conclusions, as well as  
22 the actual methodology used to reach that conclusion, so we  
23 would ask for that.

24 THE COURT: And what is the provision in the code that  
25 requires me to do findings of facts?

1 MR. HANSHEW: I don't believe there's a provision in  
2 the code that requires it, but obviously this is going to be  
3 subject to Fifth Circuit review. And it's our position that  
4 not having any live testimony and evidence admitted other than  
5 the affidavits, that it's left with some ambiguity in terms of  
6 what this Court held to be credible and/or what was the  
7 evidence that met the preponderance standard. So I just want  
8 to make sure we made that request and lodge the objection for  
9 the failure to that do that, so that the Court of Appeals  
10 doesn't say that we didn't ask you to do the same.

11 THE COURT: Sure.

12 MR. HANSHEW: Thank you, Judge.

13 THE COURT: I think probably do that right now.

14 FINDINGS OF FACTS

15 THE COURT: I think the testimony and the pretrial  
16 service's report clearly established that your client received  
17 \$32-million that was not entitled to him.

18 And then either from the testimony or the pretrial  
19 service's report, I note that Mr. Delgado should be credited  
20 with a payment of \$11,321,093. That's at page 76 of the  
21 pretrial service's report, which I find credible, and then and  
22 additional 7 -- it would have been a \$7,000 -- I'm sorry -- a  
23 \$7-million additional payment, there on page 76. So that's the  
24 \$18,321,000 that was paid to Mitsubishi in total. That would  
25 leave us with just under 14-million, so it's 13-million in

1 change.

2 And then I'm crediting him with a payment to F.G.G.,  
3 \$3,450,410 minus the 785,000 that was paid by F.G.G. back to  
4 Mr. Delgado, leaving 2,665,410.

5 MS. ARREOLA: Your Honor, my math on that was  
6 2,664,910.

7 THE COURT: I'm sorry? Could you say that again for  
8 me?

9 MS. ARREOLA: Yes, Your Honor. The amount to F.G.G.  
10 was 3,450,110, and then subtracting the 785,200 that was paid  
11 back to Mr. Delgado, the balance I got was 2,664,910.

12 THE COURT: All right. Thank you, Ms. Arreola.

13 And also, using a round number on the 14, because we  
14 have the 32-million, then the 18,321,093 that was paid to  
15 Mitsubishi, I get 13,678,907.

16 Is that your number, Ms. Arreola?

17 MS. ARREOLA: That's the number I reached, Your Honor,  
18 taking the 32-million minus the 18.3-million and change that  
19 was paid to Mitsubishi before subtracting the amount.

20 THE COURT: And we subtracted 2-million-664 and 10 is  
21 7... And then 11,013,997, is that your next one?

22 MS. ARREOLA: 11,013,997, Your Honor; is that what  
23 Your Honor said?

24 THE COURT: Okay.

25 So as finding of fact, that's how I come to the

1 number. I'm going to know, having corrected my math,  
2 \$11,013,997. I get that from the testimony in the trial and  
3 from the pretrial's report in this case, paragraph 76  
4 indicating the payments Mr. Delgado made. But I think I also  
5 need to credit him -- there's 2.5-million in the Turks and  
6 Caicos account, no? That's not his money?

7 MS. CALLAHAN: No, Your Honor. Money subject to  
8 forfeiture is actually in control of the Attorney General. The  
9 way that we handle it is that the United States will then seek  
10 to restore those funds to the victim in this case, but it  
11 wouldn't be appropriate to credit the defendant with that.

12 MR. HANSHEW: Is that not double-dipping then? I  
13 don't understand.

14 THE COURT: Yeah, then -- let's say Mr. Delgado had a  
15 very deep checking account and right now he wrote a check for  
16 \$11,013,997. So then the money in the Turks and Caicos account  
17 would be in addition to the 35-million that he got from or the  
18 32-million he got from --

19 MS. CALLAHAN: No, Your Honor, it's not. I know that  
20 this part gets confusing. The reason is both the restitution  
21 is mandatory and is considered compensation to the victim, but  
22 asset forfeiture in its laws are considered to be punishment to  
23 the defendant.

24 What the United States will represent to this Court is  
25 what it will seek to do under its own guidelines is it's

1 seeking both restitution and that it's seeking to forfeit those  
2 funds. And we have to seek to forfeit those funds, because  
3 that's the mechanism we have to bring them back. But then what  
4 will do is we will ask the Attorney General to then restore  
5 those funds to the restitution or so that they go back to the  
6 victims. And that's the mechanism that the Court has.

7 But the case law is very clear that it's not  
8 double-dipping. That's typically the argument that's made.  
9 But they're both mandatory, they can both be ordered, and then  
10 the government will seek to restore that to the victims,  
11 because its own guidelines are that the victims go first.

12 MR. HANSHEW: And if the government decides the  
13 Attorney General is with them, Mr. Sessions and all, that  
14 they're not going to give that money, then that's the --

15 MS. CALLAHAN: Then it's punishment for Mr. Delgado  
16 under the forfeiture laws for the criminal activity he  
17 undertook.

18 THE COURT: So then it's clear that that money does  
19 not belong to Mexico or you wouldn't be able to forfeit.

20 MS. CALLAHAN: Correct.

21 THE COURT: Okay. All right.

22 So I'll leave that to you, Mr. Hanshaw, to make that  
23 argument.

24 Anyway, that's the Court's restitution order,  
25 \$11,013,997. And my findings of facts are on the record. It

1 comes from the trial and from the pretrial service's report.

2 And if the government wants to submit a proposed  
3 additional findings of fact, I'm happy to consider those,  
4 otherwise I think these are sufficient.

5 All right. Anything further?

6 MS. KANOF: Nothing further from the government.

7 THE COURT: Mr. Hanshew?

8 MR. HANSHEW: Judge, the last objection to the  
9 conclusion and to findings for the record, we object for all of  
10 the reasons we put forth already.

11 THE COURT: You're objecting to my conclusions and  
12 findings?

13 MR. HANSHEW: Yes, Judge. Shocker, right?

14 THE COURT: We're adjourned.

15 COURTROOM SECURITY OFFICER: All rise.

16 (Proceedings conclude.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET  
Kathleen A. Supnet, CSR

September 7, 2018  
Date

KATHLEEN A. SUPNET, CSR